IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2599 of 2006

Vilas Changdeo Labde — Applicant
Vs.
M/s.Venu Ice Factory & ors. — Respondents

Mr.Jagdish Chaudhari with Mr.S.P.Kadam for applicant.
Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 26, 2007.

P.C.

. Heard. This is an application seeking special leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned Judicial Magistrate, First Class at Pune in Criminal Case No.2406 of 2001 filed under Section 138 of the Negotiable Instruments Act, 1881.

. It was the case of the complainant - present applicant that he had advanced the loan of Rs.4,25,000/- to M/s.Venu Ice Factory through its proprietor - Pramod Bhausaheb Labde and for repayment of the said loan he had received one cheque in the sum of Rs.4,25,000/-. The cheque was dated 4/4/2001 and it was dishonoured on 27/4/2001. Notice was issued to the accused regarding the dishonour of

cheque at Exhibit 40. The defence of the accused was that though M/s. Venu Ice Factory was a partnership firm between him and the complainant's brother, the partnership was dissolved on 1/1/2001. On receipt of the demand notice the accused had replied the same and stated that the signed cheques from his office were stolen away and misused by the complainant. In addition the accused clearly stated that he had not received any loan amount from the complainant.

. It was, therefore, for the complainant to prove that he had advanced loan to the accused to the tune of Rs.4,25,000/- between the period from 24/2/2000 to 4/4/2001. There was no document in respect of the entry made in the Income Tax Returns. The trial Court did not accept the contention that the cheques were issued in discharge of any legally enforceable liability by considering the submissions of the complainant that the total loan amount was advanced by cash. The trial Court also considered the sources of income of the complainant and recorded a finding that the complainant's plea that the loan amount was paid in cash was unacceptable. It also referred to the complaint filed by the accused with the police and obviously the accused claimed that the

missing of the cheques was realised by him only when he received the demand notice from the complainant.

. Hence the reasoning set out by the trial Court in support of the order of acquittal does not call for reconsideration at the hands of this Court. Leave to appeal is refused and the application is rejected.

(B.H.MARL